

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

XEZAKIA ROUSE,  
Plaintiff,

v.

No. CV 11-0433 MV/CG

SGT. TOBY L. BACA,  
OTHER UNNAMED SGT.,  
Defendants.

**ORDER**

**THIS MATTER** is before the Court on Plaintiff Xezakia Rouse's *Motion for Court Referral for Attorney*. (Doc. 17). In support of his motion, Mr. Rouse simply states that "Plaintiff is unable to pay an attorney and [is] unable to litigate on his own." (*Id.*).

While there is no constitutional right to appointed counsel in a civil case, 28 U.S.C. § 1915(e)(1) provides that "[t]he court may request an attorney to represent any person unable to afford counsel." In considering a pro se litigant's request for appointed counsel, the Court considers several factors: (1) the merits of the litigant's claims, (2) the nature of the factual issues raised in the complaint, (3) the litigant's ability to cogently present his claims, and (4) the complexity of the legal issues raised in the complaint. *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). Finally, "[t]he burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (quoting *McCarthy v. Weinberg*, 753 F.3d 836, 838 (10th Cir. 1985)).

Mr. Rouse's complaint states that he was assaulted by two prison guards during a

search of his cell and that he was placed in segregation for some unspecified period of time following the assault. (Doc. 5 at 2-4). It appears that the legal issues raised in the complaint are not complex. It also appears that Mr. Rouse is capable of presenting his claims since his amended complaint provides a clear narrative regarding the assault and subsequent segregation. Moreover, at this early stage of the litigation, the Court is without sufficient information to judge the merits of Mr. Rouse's claims or the legal defenses raised by Sgt. Baca. Therefore, the Court finds that the appointment of counsel is not appropriate at this time.

**IT IS THEREFORE ORDERED** that Mr. Rouse's *Motion for Court Referral for Attorney*, (Doc. 17), be **DENIED**.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

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THE HONORABLE CARMEN E. GARZA  
UNITED STATES MAGISTRATE JUDGE